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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 658

LAMBIRIS SKIRIOTES,

Appellant,

vs.

THE STATE OF FLORIDA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA.

PETITION FOR REHEARING.

W. B. Dickinson, Sr.,
W. B. Dickinson, Jr.,
Counsel for Appellant.

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To the Honorable Justices of the Said Court:

Comes now the above named appellant, Lambiris Skiriotes, by his attorneys, W. B. Dickenson, Sr., and W. B. Dickenson, Jr., and within twenty-five days from the filing of the opinion and judgment of this Honorable Court in the above entitled cause and files this his petition for rehearing in said cause, and thereupon respectfully shows unto the Court the following:

That this Court in its opinion and judgment rendered inadvertently overlooked a question raised by the appellant in this appeal, to-wit: That the provisions of Com-

piled General Laws of Florida (1927), Section 8087 (text of the statute being set forth in appellant's main brief at pages 14 and 15) is and constitutes a violation of the provisions of the 14th Amendment to the Constitution of the United States in that the statute denies to a certain class of persons or citizens of the State of Florida and of the United States the right to fish for sponge at all in the Gulf of Mexico nearer the shoreline than nine miles by the use of diving apparatus; or in other words those who fish by diving, of which the appellant is one. While under the same statute the privilege of fishing at any point in the Gulf of Mexico is given and granted to another class of persons, citizens of the State of Florida and of the United States, to-wit, all of those persons fishing for sponge by the use of hooks on the end of a long pole, or by any other method. Thus constituting an unlawful discrimination against a class with which the appellant belongs.

This question is presented to the Court in our main brief at page 14 where the Constitutional provision is quoted as follows:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States * * * nor deny to any person within its jurisdiction the equal protection of the laws."

This same section of the Constitution is again quoted at page 16 of our main brief.

The Court will further find that the same question was presented and argued to the Court in our reply brief at pages 7 and 8.

By reference to the Transcript of Record, page 5, paragraph numbered 3, the Court will find that the same question was presented to the Circuit Court of the State of Florida on appeal.

The matter was duly presented to the trial judge on a Motion to Quash the Information as shown by Transcript of Record, page 12.

This same question was presented to the Supreme Court of Florida as shown by Transcript of Record, page 48, Assignment of Error No. 3.

In the opinion of this Honorable Court filed April 28, 1941, this Court did say at pages 6 and 7 of the printed opinion:

> "If the United States may control the conduct of its citizens upon the high seas, we see no reason why the State of Florida may not likewise govern the conduct of its citizens upon the high seas with respect to matters in which the state has a legitimate interest and where there is no conflict with the Acts of Congress."

With this statement of the Court we are in full accord; but this Court overlooked entirely the question of discrimination between two classes of citizens of equal standing before the Court, the one being entirely prohibited and the other being granted entire immunity.

This Court at page 6 of the printed copy of the opinion uses this language:

> "No right of a citizen of any other state is here asserted."

This language used by this Court does carry the implication at least that a citizen of another State might be immune from prosecution under the Florida statute.

If this is correct and the Court intends to so hold; then the Section 8087 of Compiled General Laws of Florida violates Article 4, Section 2 of the Constitution of the United States which section is as follows:

> "Section 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

If, as held in the *Manchester* case cited in both of our briefs, a citizen of Alabama or a citizen of Georgia would be immune from prosecution in the use of diving apparatus for the purpose of taking sponge from the Gulf of Mexico at the same point off of the coast of Florida where the appellant was arrested; then it is obvious that this section of the Florida statute and the Constitutional provision as to boundaries taken in connection therewith does take away from a citizen of Florida, the appellant, the privileges and immunities of citizens of other States.

It is also true that this Honorable Court overlooked the further fact that this Act of the Legislature of Florida is not in any sense a regulatory act but is an act prohibiting entirely the taking of sponge from the Gulf of Mexico in a strip of water six miles wide and beginning three miles from the shoreline and extending into the Gulf of Mexico nine miles and that the southwest tip of Florida extending many miles beyond that because in actual operation the hookers, what few of them there are as shown by the Federal census of 1940, can not operate in water of a greater depth than twenty feet; therefore, the sponge lying in this prohibited strip six miles wide and extending the entire length of the West coast of Florida is in fact a total loss.

For these reasons the applicant respectfully prays the Court to grant a rehearing on the questions presented in this application. And in support of the application attaches hereto a short brief of some authorities on the questions included herein, and if permitted so to do will be glad to furnish a complete brief, the memorandum brief being submitted merely for the convenience of the Court.

Respectfully submitted,

W. B. Dickenson, Sr.,
Counsel for Appellant.

STATE OF FLORIDA,
County of Hillsborough, ss:

I, W. B. Dickenson, Sr., do hereby certify that I am one of counsel representing the appellant, Lambiris Skiriotes. I further certify that this application for rehearing is presented in good faith and not for delay.

Dated at Tampa, Hillsborough County, Florida, this 1st day of May, A. D. 1941.

W. B. DICKENSON, SR.,
One of Counsel for Appellant.

MEMORANDUM BRIEF IN SUPPORT OF APPLICATION FOR REHEARING.

We submit to the Court as a sound proposition of law that under the provisions of Article 4, Section 2 of the Constitution of the United States it is true that

A citizen of one State going into another State is entitled, under the Federal Constitution, to no greater privileges and immunities than are possessed by the citizens of that State.

It is equally true

That the citizen of every State is, under the Federal Constitution, entitled to all the privileges and immunities of a citizen of another State coming into that State.

This Court in the case of *Detroit* v. *Osborne*, 135 U. S. 492, 34 L. Ed. 260, said:

> "A citizen of one state coming into another is entitled, under the Federal Constitution, to no greater privileges and immunities than are possessed by citizens of that state."

This Court in the opinion said:

> "There should be, in all matters of local nature, but one law within the state; and that law is not what this Court might determine, but what the Supreme Court of the State has determined. A citizen of another state coming into Michigan may be entitled under the Federal Constitution to all of the privileges and immunities of citizens of that state, but under that Constitution he can claim no more. He walks the streets and highways in that state, entitled to the same rights and protection as, but none other than those accorded by its laws to its own citizens."

It is equally true that a citizen of the United States is entitled, under this Constitutional provision, to all of the rights, privileges and immunities of all citizens of the

United States under similar circumstances regardless of which State such persons are citizens of and it can not be said that a citizen of the United States on the high seas can be differentiated against in the enjoyment of any of his civil rights guaranteed to him under the Federal Constitution while on the high seas and another citizen of the United States merely because he is a citizen of a different State, treated differently.

This Court further said in *Blake* v. *McClung*, 172 U. S. 252; 19 Sup. Ct. Rep. 165, 43 L. Ed. 432:

> "The Constitutional guaranty of equal privileges and immunities to citizens forbids only legislation affecting citizens of the respective states as will substantially or practically put a citizen of one state in a condition of alienage when he is in, or when he removes to another state, or when asserting in another state the rights that commonly appertain to the people, by and for whom the government of the Union was established."

The Court will find a lengthy discussion of the questions involved here in the case of:

In *The Slaughter-House* Cases, 16 Wall. 76, 21 L. Ed. 395.

At page 408 of the Law Edition this Court in its opinion said:

> "The first occurance of the words 'privileges and immunities' in our constitutional history is to be found in the 4th of the Articles of the old Confederation.
>
> It declares 'that, the better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this Union, the free inhabitants of each of these states, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all of the privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state,

and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, *impositions,* and *restrictions* as the inhabitants thereof respectively. In the Constitution of the United States, which superseded the Articles of Confederation, a corresponding provision is found in Section 2 of the 4th Article, in the following words; 'the citizen of each state shall be entitled to all of the privileges and immunities of citizens of the several states'.

There can be little question that the purpose of both of these provisions is the same, and that the privileges and immunities intended are the same in each. In the Articles of Confederation we have some of these specifically mentioned, and enough perhaps to give some general idea of the classes of civil rights meant by the phrase."

We direct the Court's attention to the fact that this Court said that the quotations above are the same and that

> "the citizens of *each state* shall be entitled to all the *privileges and immunities of citizens of the several states.*"

The Court in defining what these fundamental principles are also said:

> "They may all, however, be comprehended under the following general headnotes, protection by the Government, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the Government may prescribe for the general good of the whole."

Under this definition and under the restrictions imposed we submit to the Court that any law of any State abridging the rights of the citizens of that State and giving superior rights to the citizens of another State coming into that State must necessarily offend against this constitutional provision.

In this connection we direct the Court's attention also to the further language used by this Court in the opinion in the cited case as follows, in speaking of this constitutional provision:

> "Its sole purpose was to declare to the several states, that whatever those rights, as you grant or establish them to your own citizens, *or as you limit or qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of the citizens of other states within your jurisdiction.*"

Certainly this statute offends against this Constitutional amendment under the above quoted language of this Court especially that part of the quoted language italicized.

Again in the opinion quoted from this Court did further say in defining the various privileges guaranteed by this Constitutional provision also:

> "*Another privilege of a citizen of the United States is to demand the care and protection of the Federal Government over his life, liberty, and property when on the high seas* or within the jurisdiction of a foreign government. Of this there can be no doubt, nor *that the right depends upon his character as a citizen of the United States.*"

We call the Court's attention to the fact that the Appellant is admittedly a citizen of the United States and is demanding the protection of his rights as a citizen of the United States; while exercising his property rights on the *high seas* as defined and adhered to by the Federal Government from 1794 to the present time.

In the case of:

Elias Ward vs. *State of Maryland*, 12 Wall. 418-443, 20 L. Ed. 449.

This Court discussing the question there presented which was a question of commerce and also involved the Second

Section of the 4th Article of the United States Constitution, this Court in the opinion said:

> "Congress possesses the power to regulate commerce among the several states as well as with commerce with foreign nations, and the Constitution also provides that the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states, and the defendant contends that the statute of the state under question, in its practical operation, is repugnant to both of those provisions to the Constitution, as it either works a complete prohibition of all commerce from the other states in goods to be sold by sample within the limits of the described district, or at least creates an unjust and onerous discrimination in favor of the citizens of the state enacting the statute, in respect to an extensive and otherwise lucrative branch of inter-state commerce, by securing to the citizens of that state, if not the exclusive control of the market, very important special privileges and immunities by exemption from burdensome requirements, and onerous exactions imposed upon the citizens of the other states desirous of engaging in the same mercantile pursuits in that district."

The appellant here contends that he is engaged in a commerce pursuit in inter-state commerce, i.e., the taking of commercial sponge on the high seas as defined by the Government of the United States and international law and that the attempt at regulation by the Florida Act of Legislature is null and void in so far as the same protects citizens of a foreign country and citizens of another state and is therefore unenforceable. That, therefore, the act in its practical enforcement creates an unjust and illegal discrimination in favor of citizens of a foreign government and citizens of another state from those immunities and privileges secured to the appellant, and therefore is a violation of the Constitutional provisions guaranteeing to him

as a citizen of the United States operating on the high seas all of the privileges and immunities of every other citizen of the United States.

The appellant is insisting to this Court that the act is an arbitrary, unreasonable distinction or discrimination against him as a citizen of the United States in favor of other citizens of the United States engaged in the same business and citizens of other nationalities engaged in the same business at the same place.

By reference to 16 Corpus Juris Secundum, page 995, Paragraph 505, Subdivision "b" the court will find this statement of the law:

> 'Legislation may be limited in scope; and it may be adjusted to differences in things and situations; but it may not make any arbitrary or unreasonable distinctions or discriminations; and within the sphere of its operation, it must accord substantially equal and uniform treatment to all persons similarly situated."

In support of this proposition we call the court's attention also to the case of:

Central Kentucky Nitro Gas Co. v. *Railroad Commission of Kentucky,* D. C. Ky., 37 F. (2d) 938;

also

United Mine Workers of America, Dist. 17 v. *Chafin, D. C. W. Va.,* 286 Fed. 959.

By further reference to 16 Corpus Juris Secundum, page 998, Sub. paragraph 2, the court will find this statement of law:

> "Equal protection of the laws is not denied by a legislative classification which is not palpably arbitrary and may reasonably be conceived to rest on some real and substantial differences or distinctions bearing a just and fair relation to the legislation."

We insist to the court that this law in itself is shown to be arbitrary, unreasonable, oppressive and a discrimination against the appellant and if so it falls within the following decisions of this Court:

Frost v. *Corporations Commission of the State of Oklahoma*, 49 S. Ct. 235, 278 U. S. 515, 73 L. Ed. 483;

Norfolk County Water Co. v. *City of Norfolk, Virginia*, 158 C. C. A. 606, 38 S. Ct. 192, 245 U. S. 672, 62 L. Ed. 540.

By reference to 12 Corpus Juris at page 1128, paragraph 855, the court will find this statement:

> "The provision of the 14th Amendment to the Federal Constitution that 'No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws', have been construed to grant to all persons equality before the law, in the sense that they render void all state statutes which make any unreasonable or arbitrary discrimination between different persons or classes of persons."

The appellant is claiming his right as a citizen of the United States and to all of the rights enjoyed by any other citizen of the United States and all of the rights enjoyed by citizens under protection of a foreign country. The latter two classes certainly are not amenable to the punishment accorded to the appellant under the Florida statute. In this connection we call the court's attention to the following cases:

Union Sewer Pipe Co. v. *Connelly*, 184 U. S. 540, 22 S. Ct. 431, 46 L. Ed. 679.

The Supreme Court of Florida has a number of times recognized the above principles of law in the case of:

State v. *Ives*, 123 Fla. 401, 167 So. 394.

The court in the paragraph of the opinion numbered 4 at page 399 of the Southern Reporter said this:

> "It is within the power of the legislature to regulate some occupation and not regulate others, but private rights secured by the Constitution must not be invaded and the regulations must operate with substantial fairness upon all persons similarly situated."

Citing with approval the case of:

Rast v. *Van Deman and Lewis Co.*, 240 U. S. 342, 36 S. Ct. 370, 60 L. Ed. 679.

Again in the case of:

Richey, et al. v. *Wells*, 123 Fla. 284, 166 So. 817.

The court at page 818 of the Southern in paragraph numbered 1, 2, and 3 said:

> (1) "It is settled law that under the Fourteenth Amendment to the Constitution of the United States an unjust and illegal discrimination may arise out of the enactment of a legislative measure that makes such unjust and illegal discrimination possible, although it is not expressly required by the terms of the law itself as written.
>
> (2) Though a law be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an unequal hand, so as to practically make unjust and illegal discriminations between persons in similar circumstances material to their rights, the denial of equal justice is still within the prohibition of the Federal Constitution under the Fourteenth Amendment. Thus, while sovereignty is not subject to law, for it is the author and source of law, the fundamental rights of life, liberty, and the pursuit of happiness are to be considered as individual possessions, secured as affirmed by the Declaration of Independence, which ante-dates both State and Federal Constitutions, and are therefore protected by both, because the Constitutions themselves so specifically declare.

(3) This means that the State itself, in administering or exercising its acknowledged powers of lawmaking, must restrain its legislative acts within the bounds of those maxims of constitutional law which ordain that no man may be compelled to hold his life, his means of living, or any material right essential to the enjoyment of life, at the mere will of another acting under laws that are not just and equal in their intended application to every one similarly situated."

Citing:

Yick Wo. v. *Hopkins,* 118 U. S. 356, 6 S. Ct. 1064, 30 L. Ed. 220.

Again in the case of:

Di Lustro v. *Penton, Sheriff,* 106 Fla. 160, 142 So. 898.

The court in paragraph numbered 1 at page 900 of the Southern Reporter said:

(1) The constitutional provision for the "Equal protection of the laws" seeks "an equality of treatment of all persons, even though all enjoy the protection of due process. It does not prohibit legislation which is limited either in the objects to which it is directed or by the territory within which it is to operate. It merely requires that all persons subject to such legislations shall be treated alike, under like circumstances and conditions, both in privileges conferred and liabilities imposed. It is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exist for making a distinction between those who fall within such class and those who do not." Cooley's Const. Limitations, pages 824, 825.

The court also said:

(3) "Classifications adopted for legislative regulation should have some just relation to, or reasonable basis in, essential differences of conditions and circum-

stances with reference to the subject regulated, and should not be merely arbitrary; and all similarly situated or having similar legal duties and obligations in regard to the subject regulated should be included in one class, at least where there are no practical differences that are sufficient to legally warrant a further or special classification in the interest of the general welfare." See, also, Cooley's Constitutional Limitations (8th Ed.) 804.

We do not wish to make this memorandum brief burdensome to the court but if the court will permit us to do so we will be glad to file a complete brief in support of the same.

Respectfully submitted,

W. B. DICKENSON,
W. B. DICKENSON, JR.,
Attorneys for Appellant.

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SUPREME COURT OF THE UNITED STATES.

No. 658.—October Term, 1940.

Lambiris Skiriotes, *vs.* The State of Florida. } Appeal from the Supreme Court of the State of Florida.

[April 28, 1941.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

Appellant, Lambiris Skiriotes, was convicted in the county court of Pinellas County, Florida, of the use on March 8, 1938, of diving equipment in the taking of sponges from the Gulf of Mexico off the coast of Florida in violation of a state statute. Compiled General Laws of Florida (1927), Section 8087. The conviction was affirmed by the Supreme Court of Florida (197 So. 736) and the case comes here on appeal.

The case was tried without a jury and the facts were stipulated. The statute, the text of which is set forth in the margin,[1] forbids the use of diving suits, helmets or other apparatus used by deep sea divers, for the purpose of taking commercial sponges from the Gulf of Mexico, or the Straits of Florida or other waters within the territorial limits of that State.

The charge was that appellant was using the forbidden apparatus "at a point approximately two marine leagues from mean low tide on the West shore line of the State of Florida and within the territorial limits of the County of Pinellas". The state court held that

[1] The statute, originally Section 4 of Chapter 7389 of the Laws of Florida of 1917, carried forward as Section 5846 of the Revised General Statutes of Florida and as Section 8087 of the Compiled General Laws of 1927, is as follows:

"It shall be unlawful for any person, persons, firm or corporation to maintain and use for the purpose of catching or taking commercial sponges from the Gulf of Mexico, or the Straits of Florida or other waters within the territorial limits of the State of Florida, diving suits, helmets or other apparatus used by deep sea divers.

"Anyone violating any of the provisions of this section shall be fined in the sum not exceeding five hundred dollars or by imprisonment not exceeding one year, or by both such fine and imprisonment." See Lipscomb v. Gialourakis, 101 Fla. 1130.

the western boundary of Florida was fixed by the state constitution of 1885 at three marine leagues (nine nautical miles) from the shore; that this was the same boundary which had been defined by the state constitution of 1868 to which the Act of Congress had referred in admitting the State of Florida to representation in Congress. Act of June 25, 1868, 15 Stat. 73. The state court sustained the right of the State to fix its marine boundary with the approval of Congress, and concluded that the statute was valid in its application to appellant's conduct.

By motions to quash the information and in arrest of judgment, appellant contended that the constitution of Florida fixing the boundary of the State and the statute under which he was prosecuted violated the Constitution and treaties of the United States; that the criminal jurisdiction of the courts of Florida could not extend beyond the international boundaries of the United States and hence could not extend "to a greater distance than one marine league from mean low tide" on the mainland of the State and adjacent islands included within its territory.

In support of this contention appellant invoked several provisions of the Constitution of the United States, to wit, Article I, Section 10, Clauses 1 and 3, Article II, Section 2, Clause 2, Article VI, and the Fourteenth Amendment. Appellant also relied upon numerous treaties of the United States, including the Treaty with Spain of February 22, 1919, and the treaties with several countries, signed between 1924 and 1930, inclusive, for the prevention of smuggling of intoxicating liquors. There were also introduced in evidence diplomatic correspondence and extracts from statements of our Secretaries of State with respect to the limits of the territorial waters of the United States. These contentions were presented to the highest court of the State and were overruled.

The first point of inquiry is with respect to the status of appellant. The stipulation of facts states that appellant "is by trade and occupation a deep-sea diver engaged in sponge fishery, his resident address being at Tarpon Springs, Pinellas County, Florida", and that he "has been engaged in this business for the past several years". Appellant has not asserted or attempted to show that he is not a citizen of the United States, or that he is a citizen of any State other than Florida, or that he is a national of any foreign country. It is also significant that in his brief in this Court,

replying to the State's argument that as a citizen of Florida he is not in a position to question the boundaries of the State as defined by its constitution, appellant has not challenged the statement as to his citizenship, while he does contest the legal consequences which the State insists flow from that fact.

It further appears that upon appellant's arrest for violation of the statute, he sued out a writ of *habeas corpus* in the District Court of the United States and was released, but this decision was reversed by the Circuit Court of Appeals. *Cunningham, Sheriff*, v. *Skiriotes*, 101 F. (2d) 635. That court thought that the question of the statute's validity should be determined in orderly procedure by the state court subject to appropriate review by this Court, but the court expressed doubt as to the right of the appellant to raise the question, saying: "Skiriotes states he is a citizen of the United States resident in Florida, and therefore is a citizen of Florida. His boat, from which his diving operations were conducted, we may assume was a Florida vessel, carrying Florida law with her, but of course as modified by superior federal law". *Id.*, pp. 636, 637.

In the light of appellant's statements to the federal court, judicially recited, and upon the present record showing his long residence in Florida and the absence of a claim of any other domicile or of any foreign allegiance, we are justified in assuming that he is a citizen of the United States and of Florida. Certainly appellant has not shown himself entitled to any greater rights than those which a citizen of Florida possesses.

In these circumstances, no question of international law, or of the extent of the authority of the United States in its international relations, is presented. International law is a part of our law and as such is the law of all States of the Union (*The Paquete Habana*, 175 U. S. 677, 700), but it is a part of our law for the application of its own principles, and these are concerned with international rights and duties and not with domestic rights and duties. The argument based on the limits of the territorial waters of the United States, as these are described by this Court in *Cunard Steamship Company* v. *Mellon*, 262 U. S. 100, 122, and in diplomatic correspondence and statements of the political department of our Government, is thus beside the point. For, aside from the question of the extent of control which the United States may exert in the interest of self-

protection over waters near its borders, although beyond its territorial limits,[2] the United States is not debarred by any rule of international law from governing the conduct of its own citizens upon the high seas or even in foreign countries when the rights of other nations or their nationals are not infringed. With respect to such an exercise of authority there is no question of international law,[3] but solely of the purport of the municipal law which establishes the duty of the citizen in relation to his own government. *American Banana Co.* v. *United Fruit Co.*, 213 U. S. 347, 355, 356; *United States* v. *Bowman*, 260 U. S. 94; *Cook* v. *Tait*, 265 U. S. 47; *Blackmer* v. *United States*, 284 U. S. 421, 437. Thus, a criminal statute dealing with acts that are directly injurious to the government, and are capable of perpetration without regard to particular locality, is to be construed as applicable to citizens of the United States upon the high seas or in a foreign country, though there be no express declaration to that effect. *United States* v. *Bowman*, *supra*.[4] The *Bowman* case arose under Section 35 of the Criminal Code. 18 U. S. C., Sec. 80. Another illustration is found in the statute relating to criminal correspondence with foreign governments. 18 U. S. C., Sec. 5. In *Cook* v. *Tait*, *supra*, we held that Congress could impose a tax upon income received by a citizen of the United States who was domiciled in a foreign country although the income was derived from property there located. In *Blackmer* v. *United States*, *supra*, the validity of an Act of Congress requiring a citizen of the United States residing in France to return to this country for the purpose of giving testimony and the service of a subpoena upon him personally by an American consul were sustained.

For the same reason, none of the treaties which appellant cites are applicable to his case. He is not in a position to invoke the

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[2] See Jessup, "The Law of Territorial Waters and Maritime Jurisdiction", Introductory Chapter, p. XXXIII, also pp. 9 *et seq.*, 80 *et seq.*; Church v. Hubbart, 2 Cranch 187; The Grace and Ruby, 283 Fed 475; The Henry L. Marshall, 286 Fed. 260, 292 Fed. 486; United States v. Ford, 3 F. (2d) 643; 40 Harv. L. R. 1.

[3] Oppenheim, International Law, 4th ed., Vol. I, § 145, p. 281; Story, Conflict of Laws, 8th ed., § 540, p. 755; Moore's International Law Digest, Vol. II, pp. 255, 256; Hyde, International Law, Vol. I, § 240, p. 424; Borchard, Diplomatic Protection of Citizens Abroad, § 13, pp. 21, 22.

[4] As to venue of prosecutions for offenses committed upon the high seas or elsewhere out of the jurisdiction of any particular state or district see 28 U. S. C., Sec. 102.

rights of other governments or of the nationals of other countries. If a statute similar to the one in question had been enacted by the Congress for the protection of the sponge fishery off the coasts of the United States there would appear to be no ground upon which appellant could challenge its validity.

The question then is whether such an enactment, as applied to those who are subject to the jurisdiction of Florida, is beyond the competency of that State. We have not been referred to any legislation of Congress with which the state statute conflicts. By the Act of August 15, 1914[5] (38 Stat. 692, 16 U. S. C., Sec. 781), Congress has prohibited "any citizen of the United States, or person owing duty of obedience to the laws of the United States" from taking in the waters of the Gulf of Mexico or the Straits of Florida outside of state territorial limits" any commercial sponges which are less than a given size, or to possess such sponges or offer them for sale. But that Act is limited to the particular matter of size and does not deal with the divers' apparatus which is the particular subject of the Florida statute. According to familiar principles, Congress having occupied but a limited field, the authority of the State to protect its interests by additional or supplementary legislation otherwise valid is not impaired. *Reid* v. *Colorado*, 187 U. S. 137, 147, 150; *Savage* v. *Jones*, 225 U. S. 501, 533; *Mintz* v. *Baldwin*, 289 U. S. 346, 350; *Kelly* v. *Washington*, 302 U. S. 1, 10. It is also clear that Florida has an interest in the proper maintenance of the sponge fishery and that the statute so far as applied to conduct within the territorial waters of Florida, in the absence of conflicting federal legislation, is within the police power of the State. *Manchester* v. *Massachusetts*, 139 U. S. 240, 266. See, also, *Cooley* v. *Board of Port Wardens*, 12 How. 299; *Morgans &c. S.S. Co.* v. *Louisiana*, 118 U. S. 455; *Compagnie Francaise* v. *Board of Health*, 186 U. S. 380; *Minnesota Rate Cases*, 230 U. S. 352, 402-410; *California* v. *Thompson*, No. 687, decided ..... Nor is there any repugnance in the provisions of the statute to the equal protection clause of the Fourteenth Amendment. The statute applies equally to all persons within the jurisdiction of the State.

Appellant's attack thus centers in the contention that the State has transcended its power simply because the statute has been

[5] This Act repealed the Act of June 20, 1906, 34 Stat. 313, which was before this Court in the case of The Abby Dodge, 223 U. S. 166.

applied to his operations inimical to its interests outside the territorial waters of Florida. The State denies this, pointing to its boundaries as defined by the state constitution of 1868, which the State insists had the approval of Congress and in which there has been acquiescence over a long period. See *Lipscomb* v. *Gialourakis,* 101 Fla. 1130, 1134, 1135; *Pope* v. *Blanton,* 10 F. Supp. 18, 22.[6] Appellant argues that Congress by the Act of June 25, 1868,[7] to which the state court refers, did not specifically accept or approve any boundaries as set up in the state constitution but merely admitted Florida and the other States mentioned to representation in Congress. And, further, that if Congress can be regarded as having approved the boundaries defined by the state constitution, these have been changed by the treaties with foreign countries relating to the smuggling of intoxicating liquors, in which the principle of the three-mile limit was declared.

But putting aside the treaties, which appellant has no standing to invoke, we do not find it necessary to resolve the contentions as to the interpretation and effect of the Act of Congress of 1868. Even if it were assumed that the *locus* of the offense was outside the territorial waters of Florida, it would not follow that the State could not prohibit its own citizens from the use of the described divers' equipment at that place. No question as to the authority of the United States over these waters, or over the sponge fishery, is here involved. No right of a citizen of any other State is here asserted. The question is solely between appellant and his own State. The present case thus differs from that of *Manchester* v. *Massachusetts, supra,* for there the regulation by Massachusetts of the menhaden fisheries in Buzzards Bay was sought to be enforced as against citizens of Rhode Island (*Id.,* p. 242) and it was in that relation that the question whether Buzzards Bay could be included within the territorial limits of Massachusetts was presented and was decided in favor of that Commonwealth. The question as to the extent of the authority of a State over its own citizens on the high seas was not involved.

If the United States may control the conduct of its citizens upon the high seas, we see no reason why the State of Florida may not

[6] The bill in this case was dismissed because of the absence of the jurisdictional amount. Pope v. Blanton, 299 U. S. 521.

[7] 15 Stat. 73.

likewise govern the conduct of its citizens upon the high seas with respect to matters in which the State has a legitimate interest and where there is no conflict with acts of Congress. Save for the powers committed by the Constitution to the Union, the State of Florida has retained the status of a sovereign. Florida was admitted to the Union "on equal footing with the original States, in all respects whatsoever".[8] And the power given to Congress by Section 3 of Article IV of the Constitution to admit new States relates only to such States as are equal to each other "in power, dignity and authority, each competent to exert that residuum of sovereignty not delegated to the United States by the Constitution itself". *Coyle* v. *Oklahoma*, 221 U. S. 559, 567.

There is nothing novel in the doctrine that a State may exercise its authority over its citizens on the high seas. That doctrine was expounded in the case of *The Hamilton*, 207 U. S. 398. There, a statute of Delaware giving damages for death was held to be a valid exercise of the power of the State, extending to the case of a citizen of that State wrongfully killed on the high seas in a vessel belonging to a Delaware corporation by the negligence of another vessel also belonging to a Delaware corporation. If it be said that the case was one of vessels and for the recognition of the formula that a vessel at sea is regarded as part of the territory of the State, that principle would also be applicable here. There is no suggestion that appellant did not conduct his operations by means of Florida boats. That he did so conduct them was assumed by the Circuit Court of Appeals in dealing with appellant's arrest in *Cunningham, Sheriff*, v. *Skiriates, supra*, and that reasonable inference has not in any way been rebutted here.

But the principle recognized in *The Hamilton, supra*, was not limited by the conception of vessels as floating territory. There was recognition of the broader principle of the power of a sovereign State to govern the conduct of its citizens on the high seas. The court observed that "apart from the subordination of the State of Delaware to the Constitution of the United States" there was no doubt of its power to make its statute applicable to the case at bar. And the basic reason was, as the court put it, that when so applied "the statute governs the reciprocal liabilities of two cor-

[8] Act of March 3, 1845, 5 Stat. 742.

porations, existing only by virtue of the laws of Delaware, and permanently within its jurisdiction, for the consequences of conduct set in motion by them there, operating outside the territory of the State, it is true, but within no other territorial jurisdiction". If confined to corporations, "the State would have power to enforce its law to the extent of their property in every case". But the court went on to say that "the same authority would exist as to citizens domiciled within the State, even when personally on the high seas, and not only could be enforced by the State in case of their return, which their domicil by its very meaning promised, but in proper cases would be recognized in other jurisdictions by the courts of other States". That is, "the bare fact of the parties being outside the territory in a place belonging to no other sovereign would not limit the authority of the State, as accepted by civilized theory". *The Hamilton, supra,* p. 403. When its action does not conflict with federal legislation, the sovereign authority of the State over the conduct of its citizens upon the high seas is analogous to the sovereign authority of the United States over its citizens in like circumstances.

We are not unmindful of the fact that the statutory prohibition refers to the "Gulf of Mexico, or the Straits of Florida or other waters within the territorial waters of the State of Florida". But we are dealing with the question of the validity of the statute as applied to appellant from the standpoint of state power. The State has applied it to appellant at the place of his operations and if the State had power to prohibit the described conduct of its citizen at that place we are not concerned from the standpoint of the Federal Constitution with the ruling of the state court as to the extent of territorial waters. The question before us must be considered in the light of the total power the State possesses (*Castillo* v. *McConnico,* 168 U. S. 674, 684; *Hebert* v. *Louisiana,* 272 U. S. 312, 316; *United Gas Co.* v. *Texas,* 303 U. S. 123, 142), and so considered we find no ground for holding that the action of the State with respect to appellant transcended the limits of that power.

The judgment of the Supreme Court of Florida is affirmed.

Affirmed.